IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 213 OF 2006

Harvilas H. Ratan. ...Applicant
V/s.
State of Maharashtra. ...Respondent

Shri P.R. Pandya for Applicant.
Shri Rajesh More, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 28, 2006

P.C. :-

1. Rule. Rule made returnable forthwith, by consent of the parties. Heard learned Counsel for the applicant and learned APP for the State.

2. This is an unfortunate case where the child by named Deepika was found in the house of her parents by a journalist who is working in "Mumbai Sakal" who noticed that the child was inside the house and the room was locked from outside. He, therefore, immediately reported this fact to the police station who came and made enquiries and an offence of grievous hurt under Sections 342, 326 of the IPC was registered against her parents. The mother had applied for anticipatory bail

which was granted by this Court during the Winter Vacation. The father was arrested and the application for bail was filed. The application was allowed by order dated 10th February, 2006. The Court, however, felt that it was essential to consider the welfare of the child since the child was kept in a remand home. The APP was, therefore, directed to take instructions from the Investigating Officer. On the next day, the learned APP informed this Court that the Investigating Officer has been transferred to some other police station and the new Investigating Officer made enquiries and learnt that she was shifted from the remand home to a private creche and that she was properly looked after. This Court directed the APP to obtain report from the competent Child Specialist and accordingly, one Ms.Geeta Gaikwad who is a Child Specialist and expert on the panel, interviewed the child and gave her report stating that she was properly looked after by the said new private creche where she was kept. Thereafter, since the Court felt that some permanent arrangement of the child should be made, the APP was directed to contact the other relatives of the child in order to find out

whether they are willing to take her care and maintain her. Accordingly, the maternal grandmother of the child Deepika filed an affidavit in which she has stated that the child was brought up by her at her native place in Punjab and the Deepika had stayed with her for a period of five years. However, she has stated that, in order to give proper education in a good school, she was brought by her parents to admit her in a convent school and therefore, the girl had difficulty in adjusting from a vernacular medium to a convent school. She has, therefore, stated that child had refused to go to the school and on number of occasions, she was scolded by her parents. I personally interviewed the child and asked her whether she would like to go to her parents or to her maternal grandmother and she promptly replied that she would prefer to stay with her maternal grandmother. I found she was happy in the company of maternal grandmother and that she wanted to go back to her. The private creche also had written a letter stating therein that the period for keeping the child in their custody was over by 22nd February and therefore, they also felt that the necessary arrangement should be

made to shift the child to another place. In view of this letter also, the custody of the child was required to be handed over to the maternal grandmother and accordingly, the custody was handed over to her. It is pertinent to note that no judicial order has been passed by any court regarding the custody of the child.

3. After the said order was passed, leave was sought to amend the application for the purpose of quashing the complaint. The application, accordingly, has been amended. Before proceeding to decide the said application, it must be noted here that both the Investigating Officers have done a thorough job in looking after the child and taking her care by keeping her in a private creche and both the Investigating Officers used to personally visit the creche to find out whether she was properly looked after. It is heartening to note that the police officers who are normally required to deal with hardened criminals have gone out of their way to look after the welfare and well-being of the child and this Court, therefore, records its appreciation to the efforts which have been taken by

both these Investigating Officers and it is hoped that the Government also considers the efforts which had been taken by them in this very sensitive case.

4. Looking to the facts and circumstances of the case, in my view, the charge of wrongful confinement will not be applicable in the present case as the child was in her own house and she was not kept somewhere outside her house. In these days, where both the husband and wife are working in a city like Bombay very often for the purpose of bringing the grocery and other necessities of life keep the child in the house in order to ensure that the child is safe and lock the door sometimes from outside so that the strangers do not enter the house and cause harm to the child. Therefore, in my view, the offence under Section 342 is not prima facie made out in this case. So far as the offence of grievous hurt is concerned, the Medical Certificate indicates that there were three healed scars and one old scar mark over the forehead. The parents very often in their anxiety ensure better prospects of their child and in the name of discipline resort to various means which

are uncalled for. Their intention, however, cannot be doubted in most of the cases and it is only with the feeling that the child is prepared to face the challenges in future like when they no longer would be with the child. I have personally interviewed both the parents on the last occasion and they have tendered their unconditional apology and have given an undertaking that even if the child returns back after sometime, she would be properly looked after and no such incident would happen again in future.

5. In these circumstances, in my view, the offence under Section 326 is not made out as there was no intention nor any injury as laid down under Section 326 to the girl. The said FIR, therefore, in my view, taking an overall view of the matter, is liable to be quashed and set aside.

6. Another fact which needs to be mentioned here that after the complaint was filed by the journalist who is working in "Mumbai Sakal", Media, it appears, had given coverage to the said report and even after the

custody was handed over to the grandmother, certain insuniations were sought to be made against the Investigating Officers. Earlier insuniations were made against the parents. I hope and trust that the Media does not forget its responsibility in covering such sensitive matters and restrain from making any allegation in such cases.

7. I must also record my appreciation of the learned APP regarding the manner in which the case is handled by the learned APP and the Court expresses its appreciation for the assistance given by him.

(V.M. Kanade, J.)